IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10646 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

YOGESH P.PAREKH

Appearance:

1. Special Civil Application No. 10646 of 1994

MR MK PATEL ASST. GOVERNMENT PLEADER for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/2002

ORAL JUDGEMENT

#. Heard Mr.M.K.Patel, learned AGP appearing on behalf of the petitioner. Though Notice of Rule has been served on the other side but none appears and no appearance is

filed on behalf of the respondent and therefore, this matter is taken up for final hearing in absence of respondent.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Rajkot in Reference No.1512 / 1987 dated 17th September, 1993, wherein the labour court has granted reinstatement with continuity of service and full backwages from 21-12-86 till the date of actual reinstatement in service.

#. Learned AGP Mr.M.K.Patel has submitted that the respondent workman was appointed by the petitioner on periodical basis and as and when term of each order has come to an end, his services on each occasion has been terminated by the petitioner. Each order of appointment is new appointment and therefore, the petitioner has not given any further order to the respondent workman that does not amount to termination and therefore, the respondent workman has not been paid any benefit. The labour court has committed gross error in not considering the contentions raised by the petitioner that such periodical appointment if the duration is come to an end, then automatically service of the workman is terminated by afflux of time. He also submitted that in all the respondent workman has worked for one year and nine months and he was working as Daily wager. Even though the labour court has granted full backwages of the interim period. He also submitted that the labour court has ignored that the petitioner is Government establishment and the respondent was working as daily wager for a limited period for one year nine months and despite this, full backwages for a period of six years has been granted to him. He also submitted that at the time of issuing Rule by this Cout on 6th September, 1994, this Court has not granted any stay against the reinstatement but stay has been granted against backwages only and, therefore, the respondent workman must have been reinstated in service by now.

#. Though notice of Rule has been served on the respondent workman, but none appears on behalf of the workman and therefore, the matter is taken up even in absence of the respondent workman.

#. I have considered submissions made by the learned AGP Mr.M.K.Patel. Services of the respondent workman was terminated on 31st December, 1986. These are undisputed facts between the parties that at the time of termination of service of the respondent workman, the petitioner has not followed the procedure under Section 25-F of the

I.D.Act, 1947. However, contention which has been raised by the learned AGP Mr.M.K.Patel to the effect that the respondent workman had not remained in service for a period of one year and he has not completed 240 days continuous service and therefore, he is not entitled to any retrenchment compensation and notice pay under Section 25-F of the I.D.Act. Before the Labour Court, statement of claim filed by the workman concerned vide Exh.3 and reply was submitted by the petitioner vide Exh.9. According to the petitioner, the workman was employed by them as work charge workman for a limited period on 29 days basis only. That as and when his work is required, he was given periodical appointment by the petitioner. Before the labour court, on behalf of the petitioner, one Kanjibhai Kurjibhai Vachhani was examined vide Exh.55 and the workman was examined at Exh.32. Except that, no other oral evidence was led before the labour court by either party. The labour court has considered the oral evidence as well as documentary evidence produced by the respective parties and also considered the appointment orders vide Exh.11 to 27. In light of the evidence, the labour court has observed that it was clear admission on behalf of the petitioner by Shri Vachhani that the workman had worked in the opponent - petitioner from 6-2-85 to 19-11-86 that is say for one year and nine months. The labour court has examined appointment orders produced vide Exh.11 to 27. In respect of order Exh.11 dated 28th February, 1985, it was for the period for 29 days from the date the workman reported for duty. Similarly, Exh.12 is the appointment order dated 11th April, 1985 it was for a period for 29 days from the date the workman reported on duty. Similarly, Exh.13 dated 4-5-85 which is appointment order for 29 days from the date on which the workman reported for duty. Exh.14 is appointment order dated 27-5-85 it was also for 29 days. In light of each order of appointment, the labour court has come to the conclusion that all these appointment orders were given to the workman to work in Bhader Adhunikaran at Dhoraji. Thereafter, another appointment order vide Exh.15 dtd 4th May, 1985 was for 29 days. Another appointment order Exh.16 dated 29th July, 1985 and thereafter appointment orders Exh.16 29th July, 85, Exh.17 dtd 15th October, 1985, Exh.18 dated 5th November, 1985. Taking into consideration all these appointment orders, the labour court has come to the conclusion that looking to the appointment order Exh.18 which shows that appointment order Exh.18 was issued on 5th November, 1985. Similarly, appointment order Exh.19 dated 4th January, 1986 giving appointment for 29 days with back date effect. Similarly, appointment order Exh.20 dated 13th

February, 86 was given to the workman concerned with back date effect. In light of this, each appointment orders examined by the labour court and ultimately come to the conclusion that all these orders reveal that the workman concerned was used to be given such orders at any point of time when the workman was working prior to issuance of the order, in other words, the appointment was used to be given with retrospective effect. There was no break in service and the workman remains in service without any single day break. These are the breaks mentioned and artificially created by the petitioner on paper with a view to deny legal benefits and to defeat legal rights of the workman. That itself amounts to victimization and unfair labour practice adopted by the State Authority. All these orders support the say of the workman that he was working continuously in the opponent - present petitioner and he was being given appointment orders for 29 days only according to convenience of the present petitioner. The labour court has also observed that the petitioner has produced certain documents vide Exh.35 attendant register and salary register relating to the period when the workman had worked in the opponent. But it was made it clear by the labour court that the opponent has not produced attendant register and salary register for the whole period during which the workman had worked in the opponent. The labour court has also further observed that looking to the appointment orders and attendant register as well as salary register, it was proved that the respondent workman had completed 240 days continuous service prior to 19th November, 1986 on which date the workman was discharged even according to the opponent. The present petitioner has not raised any contention before the labour court that Section 2[oo][bb] was applicable and therefore, it does not amount to retrenchment. No such specific contention was raised by the petitioner and the same was not argued before the labour court by the petitioner and therefore, this question does not require to be examined by this Court at this stage.

#. The labour court has also considered various decisions of this Court and ultimately come to the conclusion that before terminating services of the respondent workman, the petitioner has not complied with mandatory provisions of Section 25-F of the I.D.Act and therefore, the order of termination is set aside by the labour court. The labour court has rightly discussed the entire evidence and appreciated the same in light of each appointment order. The labour court has rightly considered the effect of appointment orders. The labour court has rightly come to the conclusion that the

respondent workman remained continued in service though on the basis of periodical orders and said orders were issued by the department as per their convenience means back date. The labour court has also rightly come to the conclusion that the respondent workman has completed 240 days continuous service and Section 25-F of the Act has been violated. Therefore, the labour court has rightly set aside the termination order and granted reinstatement with continuity of service to the respondent workman and while issuing said directions, the labour court has not committed any error and there is no infirmity in the award passed by the labour court and the learned AGP Mr.M.K.Patel is also not able to point out any infirmity or error in the award in question.

#. However, in respect of the backwages aspect, the labour court has granted full backwages of the interim period with effect from 21st December, 1986. But the submission made by learned AGP Mr.M.K.Patel that the petitioner being the Government establishment and the fact that in all the respondent workman had worked for a period of one year and nine months as daily wager and therefore full backwages cannot be granted to the respondent workman. He also submitted that the respondent workman who was working in a Unit which is already closed down. In fact, the labour court has observed that in the present case, it is not shown that the work which the workman was doing in the opponent was over, on the contrary, it has come on record that Sub Section 9 of the Bhadar Adhunikaran Irrigation is still going on. Learned AGP Mr.Patel has also submitted that Reference remained pending before the labour court for more than six years and therefore, according to him, the labour court has committed an error in grating full backwages to such daily wager who has just rendered services of one year and nine months only.

#. I have considered submissions of the learned advocate for petitioner. Undisputedly, the respondent workman had worked for a period of one year and nine months only as daily wager. The petitioner is Government establishment and Reference remained pending before the labour court for a period more than six years and another aspect that being technical breach not to comply Section 25-F of the I.D.Act, according to my opinion, if entitlement of full backwages of the interim period awarded by the labour court is reduced to 50 % per cent, will meet the ends of justice. Accordingly, the award passed by the labour court, Rajkot in Reference No.1512 / 1987 dated 17th September, 1993 is modified to the extent that now the respondent workman will be entitled to 50 % back wages

for the period from 21st December, 1986 to till the date of award instead of full backwages. Rest of the directions issued by the labour court granting reinstatement with continuity of service shall remain intact and not disturbed by this Court. The award in question stands modified accordingly. Present petition is partly allowed accordingly. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

Date : 14-10-2002 [H.K.Rathod, J.]

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